HON'BLE THE CHIEF JUSTICE SHRI G.S. SINGHVI
AND
HON'BLE SHRI JUSTICE C.V. NAGARJUNA REDDY

Writ Appeal No. 610 of 2007

Between:

Thoopili Surendranath Reddy and five others

... Appellants

And

The District Collector, Nellore,
Nellore District and three others

... Respondents

::JUDGMENT::

Counsel for the appellants : Shri T.C. Krishnan

August 20, 2007

Per G.S. Singhvi, CJ

This appeal is directed against order dated 16-7-2007 passed by the learned Single Judge in Writ Petition No. 11042 of 2007, whereby he refused to interfere with the action taken by the respondents to demolish the fish ponds operated by the appellants on agricultural land comprised in Survey Nos.517, 518, 525/A, 527 and 528 of Eeduru Village, T.P. Gudur Mandal, Nellore District.

A perusal of the record shows that the appellants converted the agricultural land and started using the same for fish/prawn culture without obtaining permission from the competent authority. In 2006, they filed Writ Petition No.20919 of 2006 for restraining the respondents from demolishing the fish ponds. The same was dismissed by the learned Single Judge on 13.10.2006 by observing that the apprehension of the petitioners was not well founded. After

about four months, Tahsildar, T.P. Gudur Mandal, Nellore District (respondent No.3 herein) issued notices dated 15.2.2007 to the appellants to show cause against the proposed demolition of the fish ponds. The appellants filed reply dated 26.2.2007 and objected to the demolition of the fish ponds by contending that they had not changed the texture of the land and that their land would not fall under full tank level of Eeduru/Koduru tank. After considering the replies of the appellants, respondent No.3 passed detailed reasoned orders dated 7.5.2007 requiring them to stop aqua culture forthwith and to bring the texture of the land to its original status with a stipulation that if they fail to do so, the fish ponds will be removed and the expenditure will be recovered from them. For the sake of reference, the relevant portions of order dated 7.5.2007 passed in the case of appellant No.5 are reproduced below:

> "The contention of Sri Nellipudi Sesha Reddy that he/she is doing fresh water prawn culture for which no prior approval is required from any authority and that the same was also very much declared by the Aquaculture Authority of India, that only the shrimp culture and culture in black water required prior approval, whereas the culture in fresh water is not required any prior approval, which do not cause any pollution, that the provisions of Sec.35 (2) of A.P. WALTA Act is not required any prior approval, which do not cause any pollution, that the provisions of Sec.35 (2) of A.P. WALTA Act is not applicable to this case and at no point of time the activity of Prawn culture was not objected by anyone. The contention is not correct and baseless. The Divisional Bench of the Hon'ble High Court in MADIREDDY PADMA RAMBABU v. DISTRICT FOREST OFFICER, KAKINADA, 2002 (1) ALD 728 (DB), dated 24-4-2002, W.A.No.700/2002 has observed – "so far as the matter relating to Prawn Culture, Shrimp culture or aquaculture is concerned, there cannot be any doubt that the matter had been gone into by the Apex Court in S. JAGANNATH v. UNION OF INDIA, AIR 1997 SC 811. It was further observed that in the aforementioned judgment, the apex court although was considering a complaint of inaction on the part of the State to enforce the prohibition as regards shrimp culture in Coastal Regulation Zone (CRZ), it had called for expert committee report and went into the entire ground and issued direction. As would be noticed hereinafter such directions are not confirmed only to matters relating to shrimp culture of prawn culture on brackish/saline water within CRZ but also aquaculture and prawn culture in fresh

water. In view of the directions issued by the apex court, it must be held that having regard to the provisions contained in Articles 141, 142 and 144 of the Constitution, all the concerned authorities being bound must abide by there with and render all assistance to see that the judgment of the apex court is punctually observed and carried into execution by all concerned." As such, the contention is absolutely not correct and against the orders of the Hon'ble Courts.

The contention of Sri Nellipudi Sesha Reddy that the texture of the land is not changed is also not correct as by taking of aquaculture, not only the level of ground is altered and by way of using chemicals and other material, the texture of the soil is affected, to a greater extent and the process goes on year by year and the contaminated water is regularly let of into the tank.

The contention that the provision of Section 35 (2) of A.P. WALTA Act does not apply is not correct and taking up/continuation of cultivation of aquaculture in the lands that fall under Full Tank Level is absolutely in contravention of Section 35 (2) of A.P. WALTA Act. Even if others have taken up Aquaculture, he would sought remedy elsewhere and taking up Aquaculture without permission against the rules is not agreeable.

In view of the above, Sri Nellipudi Sesha Reddy has taken up aquaculture in the lands that fall in Full Tank Level in the Sy. Numbers mentioned above without obtaining prior permission from the authorities and hence, he/she is hereby directed to stop aquaculture forthwith and to bring the texture of the land to original status or otherwise Fish Ponds will be removed and the expenditure incurred will be recovered under A.P.R.R. Act."

The learned Single Judge dismissed the writ petition filed by the appellants by observing that in view of the judgments of the Supreme Court in **S. Jagannath v. Union of India**[1] and of this Court in **Madireddy Padma Rambabu v. District Forest Officer, Kakinada**[2], the writ petitioners cannot continue to operate fish ponds and respondent No.3 did not commit any illegality by ordering removal thereof.

We have heard Shri T.C. Krishnan, learned counsel for the appellants at considerable length and critically scrutinised the entire record. Admittedly, the appellants have not obtained permission from the competent authority for operating fish ponds or undertaking prawn culture on the agricultural land. Therefore, the action taken by

respondent No.3 for stopping their activity and for demolition of the fish ponds cannot be termed as illegal. Rather, the said action is in consonance with the direction given by this Court in **Madireddy Padma Rambabu v. District Forest Officer, Kakinada** (supra). In that case, the Division Bench referred to the judgments of the Supreme Court in **S. Jagannath's case** (supra), **Gopi Aqua Farms v. Union of India**[3], **Indian Council for Enviro-Legal Action v. Union of India**[4], **A.P. Pollution Control Board v. Prof.M.V. Nayudu**[5], **A.P. Pollution Control Board –II v. M.V. Nayudu**[6], **M.C. Mehta v. Kamal Nath**[7] and **U.P. Pollution Control Board v. Mohan Meakins Limited**[8] and approved the judgment of the learned Single Judge in **K.R. Krisianaiah v. Mandal Executive Magistrate and MRO, Muthukur**[9], wherein it was held as under:

> "The existence of the tank and ayakut thereunder is not in dispute. May be the aquaculturists are the owners of some extents of the lands situated in the tank bed. May be they were doing aquaculture whenever the lands were available for such cultivation. May be the aquaculturist has right to use the lands for agricultural purpose whenever such lands remain free from submergence. But the question that would arise for consideration is as to whether the aqua culturists can be allowed to indulge in any act, which may prove disastrous and detrimental to the legitimate interest of farmers whose lands are included in the ayacut of Krishnapatnam tank. The agriculturists are asserting their right to receive unpolluted and sufficient quantity of water from Krishnapatnam tank for agricultural purposes. It is a case of aquaculture versus agriculture. In Jagannath's case (supra) the Supreme Court approved the positive findings of the NEERI that the damage caused to ecology and economics by the aquaculture farming is higher than the earnings from the sale of aquaculture produce. The Supreme Court also noticed the deterioration of ground water quality land the contamination of the soil itself in the villages over one km away from the pond site. Yet unmindful of consequence the mechanized and intensive aquaculture practice continues in some parts of the State. In the instant case, the tank bed land of a public irrigation source is sought to be converted into fish/shrimp ponds. The attempt of such conversion is resisted by the farmers and rightly so."

The Division Bench then noticed the provisions of the Environment (Protection) Act, 1986, the guidelines issued by the Aquaculture Authority, Government of India, Ministry of Agriculture, Department of Animal Husbandry and Dairying and held:

> "It has not been disputed that for the purpose of carrying out the said activities deep borewells had been dug, extensive use whereof had in various cases led to salination of the ground water. It has also not been disputed that by reason of such extensive prawn culture or aquaculture, the surrounding agricultural lands had become for all practical purposes useless for cultivation of paddy and other crops. The salinated fish tank water oozes through soil pores to the adjacent land where crops are raised and thereby the adjacent land gets damaged. The extensive use of the fish tank bed as aquaculture etc. will completely convert the adjacent land uncultivable after some years due to percolation of polluted water from the fish tank. There are also some cases in the area in or around Kolleru Lake. The directions contained herein as also the conclusions reached would govern such lands."

In the result, the appeal is dismissed.

As a sequel to dismissal of the appeal, WAMP Nos. 1233 and 1258 of 2007 filed by the appellants are also dismissed.

G.S. SINGHVI, CJ

August 20, 2007

C.V. NAGARJUNA REDDY, J

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[1] AIR 1997 SC 811
[2] 2002 (1) ALD 728 (DB)
[3] AIR 1997 SC 3519
[4] (1996) 5 SCC 281
[5] (1999) 2 SCC 718
[6] (2001) 2 SCC 62
[7] AIR 2000 SC 1997
[8] (2000) 3 SCC 745
[9] 2001 (2) ALD 642